

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-CV-12361-NMG

JOHN NEVULIS  
Plaintiff,

v.

CITY OF BOSTON,  
Defendant.

**DEFENDANT CITY OF BOSTON'S MOTION TO DISMISS**  
**PLAINTIFF'S COMPLAINT**

NOW COMES the Defendant, City of Boston, and moves this Honorable Court pursuant to Fed.R.Civ.P. 12(b)(6), to dismiss Plaintiff's Complaint. Plaintiff sues the City for negligence in violation of M.G.L. ch. 84, § 15 (Count I) and for violating Title II of the Americans With Disabilities Act (ADA)(Count II). As is explained more fully in Defendant's Memorandum of Law, Plaintiff fails to state claim upon which relief may be granted, and his Complaint should be dismissed accordingly with prejudice.

Respectfully submitted,

DEFENDANT, CITY OF BOSTON

Merita A. Hopkins  
Corporation Counsel

By its attorneys:

/s/ Kate Cook  
Kate Cook BBO# 650698  
Susan Weise BBO# 545455  
Assistant Corporation Counsel  
City of Boston Law Department  
Room 615, City Hall  
Boston, MA 02201  
(617) 635-4022 (Cook)  
(617) 635-4022 (Weise)

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)**

I hereby certify that undersigned counsel for the Defendant, City of Boston, discussed the above motion with Francis Harney via telephone on, December 14, 2004, both in a good faith effort to resolve and narrow the issues presented by said motion, but that counsel were unable to resolve the issues prior to filing of the motion.